

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MARK D. WALBY)

For Appellant: Mark D. Walby, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

James C. Stewart
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Mark D. Walby against a proposed assessment of additional personal income tax in the amount of \$309.18 for the year 1976.

Appeal of Mark D. Walby

The sole issue for determination is whether appellant was qualified for head of household status in 1976.

Appellant and his wife separated during June 1976, and remained separated for the balance of the year. Appellant's wife filed for an interlocutory decree of dissolution of marriage in October 1976. However, a final decree of dissolution was not issued until April 1977.

During all of 1976 appellant supported his mother as a member of his household. Appellant filed his 1976 personal income tax return as a head of household claiming his mother as his qualifying dependent. Respondent disallowed appellant's claimed head of household status since appellant was still legally married at the end of 1976. Respondent did allow appellant a dependent exemption credit for his mother.

The term "head of household" is defined in section 17042 of the Revenue and Taxation Code which provides, in pertinent part:

For purposes of this part, an individual shall, be considered a head of household if, and only if, such individual is not married at the close of his taxable year, and ...

(b) Maintains a household which constitutes for such taxable year the principal place of abode of the father or mother of the taxpayer, if the taxpayer is entitled to a credit for the taxable Year for such father or mother under Section 17054.

During 1976, although the taxpayer was separated from his spouse, he was still considered married for purposes of claiming head of household status unless, at the close of the taxable year, he was legally separated from his spouse under a final decree of divorce or of separate maintenance. (Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (a) (D).) Since appellant was legally married on the last day of 1976, he was not eligible to file as a head of household for that year. This conclusion is not changed by the fact that appellant was separated from his wife at the end of the year. Without a final decree of dissolution or separate maintenance, a married individual cannot qualify as a head of household even though separated from his spouse for part of the year. (Appeal of Robert J. Evans, Cal. St. Bd. of Equal., Jan. 6, 1977; Appeal of Dennis M. Vore, Cal. St. Bd. of Equal., July 31, 1973.)

Appeal of Mark D. Walby

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Mark D. Walby against a proposed assessment of additional personal income tax in the amount of \$309.18 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of April, 1979, by the State Board of Equalization.

William L. Bernick Chairman
Philip J. [unclear] Member
Robert [unclear] Member
Leo R. [unclear] Member
M e m b e r